

*Kaptur 044*

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H.L.C.

**AMENDMENT TO H.R. 2646, AS REPORTED**  
**OFFERED BY ME. KAPTUR OF OHIO**

AMENDMENT No. \_\_\_\_: Page \_\_\_\_, line \_\_\_\_, insert the following new section:

**1 SEC. \_\_\_\_ FAMILY FARMER COOPERATIVE MARKETING.**

**2 (a) DEFINITIONS.—**

**3 (1) PRODUCER.—**Subsection (b) of section 3 of  
**4 the Agricultural Fair Practices Act of 1967 (7**  
**5 U.S.C. 2302) is amended—**

**6 (A) by inserting “poultryman,” after**  
**7 “dairyman,”; and**

**8 (B) by adding at the end the following:**  
**9 “The term includes a person furnishing labor,**  
**10 production management, facilities, or other**  
**11 services for the production of an agricultural**  
**12 product.”.**

**13 (2) ASSOCIATION OF PRODUCERS.—**Subsection  
**14 (c) of such section is amended by inserting “that en-**  
**15 gages in the marketing of such agricultural products**  
**16 or of agricultural services described in the second**  
**17 sentence of subsection (b), including associations”**  
**18 before “engaged in”.**



1 (3) ADDITIONAL DEFINITIONS.—Such section is  
2 further amended by striking subsection (e) and in-  
3 serting the following new subsections:

4 “(e) The term ‘accredited association’ means an asso-  
5 ciation of producers accredited by the Secretary of Agri-  
6 culture in accordance with section 6.

7 “(f) The term ‘designated handler’ means a handler  
8 that is designated pursuant to section 6.

9 “(g) The terms ‘bargain’ and ‘bargaining’ mean the  
10 performance of the mutual obligation of a handler and an  
11 accredited association to meet at reasonable times and for  
12 reasonable periods of time for the purpose of negotiating  
13 in good faith with respect to the price, terms of sale, com-  
14 pensation for products produced or services rendered  
15 under contract, or other provisions relating to the prod-  
16 ucts marketed, or the services rendered, by the members  
17 of the accredited association or by the accredited associa-  
18 tion as agent for the members.”.

19 (b) PROHIBITED PRACTICES.—Section 4 of the Agri-  
20 cultural Fair Practices Act of 1967 (7 U.S.C. 2303) is  
21 amended—

22 (1) in the matter preceding the subsections, by  
23 striking “the following practices;” and inserting  
24 “any of the following practices:”

1 (2) in subsection (a), by inserting “interfere  
2 with, restrain, or” before “coerce”;

3 (3) by striking “or” at the end of subsections  
4 (a), (b), (c), (d), and (e) and inserting a period; and

5 (4) by adding at the end the following new sub-  
6 sections:

7 “(g) To refuse to bargain in good faith with an ac-  
8 credited association, if the handler is designated pursuant  
9 to section 6.

10 “(h) To dominate or interfere with the formation or  
11 administration of any association of producers or to con-  
12 tribute financial or other support to an association of pro-  
13 ducers.”.

14 (c) BARGAINING IN GOOD FAITH.—Section 5 of the  
15 Agricultural Fair Practices Act of 1967 (7 U.S.C. 2304)  
16 is amended to read as follows:

17 **“SEC. 5. BARGAINING IN GOOD FAITH.**

18 “(a) CLARIFICATION OF OBLIGATION.—The obliga-  
19 tion of a designated handler to bargain in good faith shall  
20 apply with respect to an accredited association and the  
21 products or services for which the accredited association  
22 is accredited to bargain. The good-faith bargaining re-  
23 quired between a handler and an accredited association  
24 does not require either party to agree to a proposal or  
25 to make a concession.

1       “(b) EXTENSION OF SAME TERMS TO ACCREDITED  
2 ASSOCIATION.—If a designated handler purchases a prod-  
3 uct or service from producers under terms more favorable  
4 to such producers than the terms negotiated with an ac-  
5 credited association for the same type of product or serv-  
6 ices, the handler shall offer the same terms to the accred-  
7 ited association. Failure to extend the same terms to the  
8 accredited association shall be considered to be a violation  
9 of section 4(g). In comparing terms, the Secretary of Agri-  
10 culture shall take into consideration (in addition to the  
11 stipulated purchase price) any bonuses, premiums, hauling  
12 or loading allowances, reimbursement of expenses, or pay-  
13 ment for special services of any character which may be  
14 paid by the handler, and any sums paid or agreed to be  
15 paid by the handler for any other designated purpose than  
16 payment of the purchase price.

17       “(c) MEDIATION AND ARBITRATION.—The Secretary  
18 of Agriculture may provide mediation services with respect  
19 to bargaining between an accredited association and a des-  
20 ignated handler at the request of either the accredited as-  
21 sociation or the handler. If an impasse in bargaining has  
22 occurred (as determined by the Secretary), the Secretary  
23 shall provide assistance in proposing and implementing ar-  
24 bitration agreements between the accredited association  
25 and the handler. The Secretary may establish a procedure

1 for compulsory and binding arbitration if the Secretary  
2 finds that an impasse in bargaining exists and such im-  
3 passe will result in a serious interruption in the flow of  
4 an agricultural product to consumers or will cause sub-  
5 stantial economic hardship to producers or handlers in-  
6 volved in the bargaining.”.

7 (d) ACCREDITATION OF ASSOCIATIONS AND DES-  
8 IGNATION OF HANDLERS.—The Agricultural Fair Prac-  
9 tices Act of 1967 is amended—

10 (1) by redesignating sections 6 and 7 (7 U.S.C.  
11 2305, 2306) as sections 9 and 11, respectively; and

12 (2) by inserting after section 5 (7 U.S.C. 2304)  
13 the following new section:

14 **“SEC. 6. ACCREDITATION OF ASSOCIATIONS AND DESIGNA-**  
15 **TION OF HANDLERS.**

16 “Not later than \_\_\_\_ after the date of the enactment  
17 of this section, the Secretary shall establish procedures—

18 “(1) to accredit associations seeking to bargain  
19 on behalf of producers on an agricultural product or  
20 service; and

21 “(2) for designation of handlers with whom pro-  
22 ducer associations seek to bargain.”.

23 (e) INVESTIGATIVE POWERS OF SECRETARY.—The  
24 Agricultural Fair Practices Act of 1967 (7 U.S.C. 2301

1 et seq.) is amended by inserting after section 6 (as added  
2 by subsection (d)(2)) the following new section:

3 **"SEC. 7. INVESTIGATIVE POWERS OF SECRETARY.**

4       “(a) INVESTIGATIVE POWERS.—The Secretary of Ag-  
5 riculture shall have the following powers to carry out the  
6 objectives of this Act, including the conduct of any inves-  
7 tigations or hearings:

8           “(1) The Secretary may require any person to  
9 establish and maintain such records, make such re-  
10 ports, and provide such other information as the  
11 Secretary may reasonably require.

12           “(2) The Secretary and any officer or employee  
13 of the Department of Agriculture, upon presentation  
14 of credentials and a warrant or such other order of  
15 a court as may be required by the Constitution—

16               “(A) shall have a right of entry to, upon,  
17 or through any premises in which records re-  
18 quired to be maintained under paragraph (1)  
19 are located, and

20               “(B) may at reasonable times have access  
21 to and copy any records, which any person is  
22 required to maintain or which relate to any  
23 matter under investigation or in question.

24       “(b) TREATMENT OF RECORDS.—

1           “(1) IN GENERAL.—Except as provided in para-  
2       graph (2), any records, reports, or information ob-  
3       tained under this section shall be available to the  
4       public.

5           “(2) EXCEPTION.—Upon a showing satisfactory  
6       to the Secretary of Agriculture that records, reports,  
7       or information acquired under this section, if made  
8       public, would divulge confidential business informa-  
9       tion, the Secretary shall consider such record, re-  
10      port, or information or particular portion thereof  
11      confidential in accordance with section 1905 of title  
12      18, United States Code, except that the Secretary  
13      may disclose such record, report, or information to  
14      other officers, employees, or authorized representa-  
15      tives of the United States concerned with carrying  
16      out this Act or when relevant in any proceeding  
17      under this Act.

18      “(c) POWERS RELATED TO HEARINGS.—

19           “(1) ATTENDANCE OF WITNESSES.—In making  
20      inspections and investigations under this Act, the  
21      Secretary of Agriculture may require the attendance  
22      and testimony of witnesses and the production of  
23      evidence under oath.

24           “(2) SUBPOENA POWER.—The Secretary, upon  
25      application of any party to a hearing held under sec-

1       tion 9, shall forthwith issue to such party subpoenas  
2       requiring the attendance and testimony of witnesses  
3       or the production of evidence requested in such ap-  
4       plication. Within five days after the service of a sub-  
5       poena on any person requiring the production of any  
6       evidence in the possession of the person or under the  
7       control of the person, the person may petition the  
8       Secretary to revoke such subpoena. The Secretary  
9       shall revoke such subpoena if in the opinion of the  
10      Secretary the evidence whose production is required  
11      does not relate to any matter in question, or if such  
12      subpoena does not describe with sufficient particu-  
13      larity the evidence whose production is required.

14           “(3) OATHS AND OTHER MATTERS.—The Sec-  
15      retary, or any officer or employee of the Department  
16      of Agriculture designated for such purpose, shall  
17      have power to administer oaths, sign and issue sub-  
18      poenas, examine witnesses, and receive evidence.  
19      Witnesses shall be paid the same fees and mileage  
20      allowance as are paid witnesses in the courts of the  
21      United States.

22           “(d) FAILURE TO COMPLY.—In the case of any fail-  
23      ure or refusal of any person to obey a subpoena or order  
24      of the Secretary of Agriculture under this section, any dis-  
25      trict court of the United States, within the jurisdiction of



1 which such person is found or resides or transacts busi-  
2 ness, upon the application by the Secretary shall have ju-  
3 risdiction to issue to such person an order requiring such  
4 person to appear to produce evidence if, as, and when so  
5 ordered to give testimony relating to the matter under in-  
6 vestigation or in question. Any failure to obey such order  
7 of the court may be punished by the court as a contempt  
8 of court.”.

9 (f) ADMINISTRATIVE PROCEEDINGS TO PREVENT  
10 PROHIBITED PRACTICES.—The Agricultural Fair Prac-  
11 tices Act of 1967 (7 U.S.C. 2301 et seq.) is amended by  
12 inserting after section 7 (as added by subsection (e)) the  
13 following new section:

14 **“SEC. 8. ADMINISTRATIVE PROCEEDINGS TO PREVENT**  
15 **PROHIBITED PRACTICES.**

16 “(a) PETITION.—Any person complaining of any vio-  
17 lation of section 4 or other provision of this Act may apply  
18 to the Secretary of Agriculture by petition, which shall  
19 briefly state the facts serving as the basis for the com-  
20 plaint. If, in the opinion of the Secretary, the facts con-  
21 tained in the petition warrant further action, the Secretary  
22 shall forward a copy of the petition to the accredited asso-  
23 ciation or handler named in the petition, who shall be  
24 called upon to satisfy the complaint, or to answer it in



1 writing, within a reasonable time to be prescribed by the  
2 Secretary.

3 “(b) INVESTIGATION AND COMPLAINT.—If there ap-  
4 pears to be, in the opinion of the Secretary, reasonable  
5 grounds for investigating a complaint made under sub-  
6 section (a), the Secretary of Agriculture shall investigate  
7 such complaint or notification. In the opinion of the Sec-  
8 retary, if the investigation substantiates the existence of  
9 a violation of section 4 or other provision of this Act, the  
10 Secretary may cause a complaint to be issued. The Sec-  
11 retary shall have the complaint served by registered mail  
12 or certified mail or otherwise on the person concerned and  
13 afford such person an opportunity for a hearing thereon  
14 before a duly authorized examiner of the Secretary in any  
15 place in which the subject of the complaint is engaged in  
16 business.

17 “(c) HEARING.—The person complained of shall have  
18 the right to file an answer to the original and any amend-  
19 ed complaint and to appear in person or otherwise and  
20 give testimony. The person who filed the charge shall also  
21 have the right to appear in person or otherwise and give  
22 testimony. Any such proceeding shall, as far as prac-  
23 ticable, be conducted in accordance with the rules of evi-  
24 dence and the rules of civil procedure applicable in the  
25 district courts of the United States.



1       “(d) ORDERS.—If, upon a preponderance of the evi-  
2       dence, the Secretary of Agriculture is of the opinion that  
3       the person subject to the complaint has violated section  
4       4 or other provision of this Act, the Secretary shall issue  
5       an order containing the Secretary’s findings of fact and  
6       requiring the person to cease and desist from such viola-  
7       tion. The Secretary may order such further affirmative ac-  
8       tion, including an award of damages to compensate the  
9       person filing the petition for the damages sustained, as  
10      will effectuate the policies of this Act and make the person  
11      filing the petition whole.

12      “(e) COMPLAINTS INSTITUTED BY SECRETARY.—The  
13      Secretary of Agriculture may at any time institute an in-  
14      vestigation under subsection (b) if there appears to be,  
15      in the opinion of the Secretary, reasonable grounds for  
16      the investigation and the matter to be investigated is such  
17      that a petition is authorized to be made to the Secretary.  
18      The Secretary shall have the same power and authority  
19      to proceed with any investigation instituted under this  
20      subsection as though a petition had been filed under sub-  
21      section (a), including the power to make and enforce any  
22      order.

23      “(f) JUDICIAL REVIEW.—

24              “(1) OBTAINING REVIEW.—Any person ag-  
25      grieved by a final order of the Secretary of Agri-



1 culture issued under subsection (d) may obtain re-  
2 view of such order in the United States Court of Ap-  
3 peals for the District of Columbia by submitting to  
4 such court within 30 days from the date of such  
5 order a written petition praying that such order be  
6 modified or set aside.

7 “(2) TREATMENT OF FINDINGS.—The findings  
8 of the Secretary with respect to questions of fact, if  
9 supported by substantial evidence on the record,  
10 shall be conclusive.

11 “(3) EFFECT OF FAILURE TO SEEK TIMELY RE-  
12 VIEW.—If no petition for review, as provided in  
13 paragraph (1), is filed within 30 days after service  
14 of the Secretary’s order, the order shall not be sub-  
15 ject to review in any civil or criminal proceeding for  
16 enforcement, and the findings of fact and order of  
17 the Secretary shall be conclusive in connection with  
18 any petition for enforcement which is filed by the  
19 Secretary after the expiration of such period. In any  
20 such case, the clerk of the court, unless otherwise  
21 ordered by the court, shall forthwith enter a decree  
22 enforcing the order and shall transmit a copy of  
23 such decree to the Secretary and the person named  
24 in the complaint.

